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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,914	03/19/2004	T. Brent Freese	FRE001-088	6779
<div>7590 07/10/2007 DIEDERIKS & WHITELOW, PLC 12471 Dillingham Square, #301 Woodbridge, VA 22192</div>			<div>EXAMINER COCKS, JOSIAH C</div>	
			<div>ART UNIT 3749</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 07/10/2007</div>	<div>DELIVERY MODE PAPER</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/803,914

Applicant(s)

FREESE ET AL.

Examiner

Josiah Cocks

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6 and 9-20 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 17, 2007 has been entered.

Response to Amendment

2. Receipt of the amendment filed April 5, 2007 in response to the Notice of Non-Compliant Amendment mailed March 29, 2007 is acknowledged.

Claim Objections

3. Claims 7 and 8 are objected to because of the following informalities: In claim 78, line 2, the term "that" should read "than". Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. **Claims 1, 2, 4-6, and 9-15, and 17-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **U.S. Patent No. 2,169,904 to Schweller** ("Schweller") in view of **U.S. Patent No. 1,013,313 to Richardson** ("Richardson").

Schweller discloses in the specification and Fig. 1 an invention substantially as described in applicant's claims 1, 2, 4-6, and 9-15, and 17-20.

Initially, the examiner notes that as to the interpretation of limitations in the preamble of a claim, it has been held that the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999). See also MPEP 2111.02. Further, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

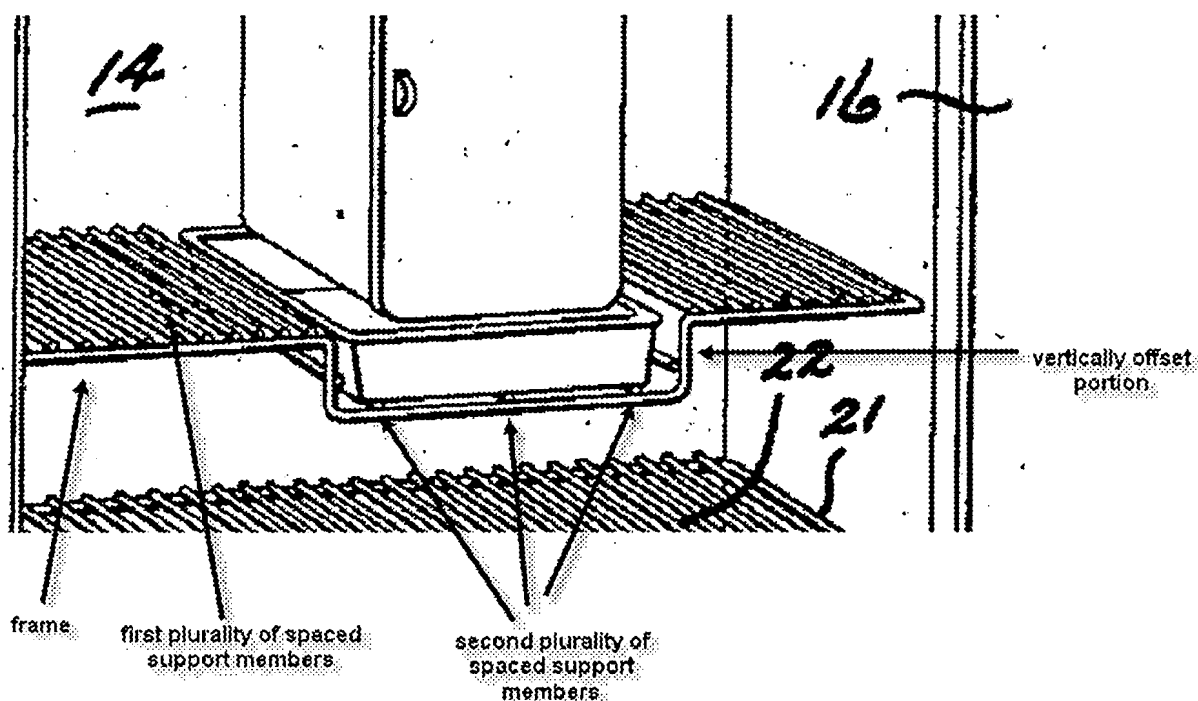
In this case, the recitations of claim 1 that the rack is an "oven" rack "for supporting a food item to be cooked in an oven cavity of an appliance" are considered merely statements of the intended use or purpose of the rack and are not significant to claim construction.

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In regard to at least claim 1, Schweller shows a rack that includes a rack having the structure as recited. A segment of Fig. 1 of Schweller showing the rack relied upon by the examiner is reproduced below.

Enlarged segment of Fig. 1 of Schweller

(the examiner has added the lead arrows and text appearing below)



At least the above segment of Schweller is considered to show the frame portion as described including a vertically offset portion and a support platform that includes a first plurality of spaced support members forming a “food item support zone” and a second plurality of spaced support members fixed to a front rod of the frame and forming a “food item access zone” as recited.

Further, as noted above, the intended use recitations of the claims are not regarded to limit the structure of the rack. The examiner considers that the rack shown in Schweller would be capable of operating for the purpose or intended use recited, i.e. serving as an oven rack to support a food item to be cooked. Support for this assertion is found in the reference to Richardson. In Richardson, it is made clear that the types of racks appearing in refrigerators (such as that of Schweller) are understood to be also functional in an oven or "similar receptacle" or "analogous article" (see Richardson, page 1, lines 7 and 44-49). To this end, Richardson shows a receptacle (6), termed an oven, that receives a rack 25) that is substantially identical to the receptacle (11) of Schweller that receives a rack (see segment above). Accordingly, a person of ordinary skill in the art would reasonably consider that the rack of Schweller would be operable to support a food item in an oven when rack is employed in an oven in a well known manner as taught in Richardson.

In regard to at least claim 2, the food item access zone formed by the second plurality of rods is vertically below a plane defined by the food item support zone.

In regard to at least claim 4, the first plurality of spaced support members are in a common plane and the second plurality of support members would reasonably be considered to extend from a rear support rod of the rack in the manner recited thereby extending through the bend portion (see center bends of rack) to join the vertically offset portion.

In regard to at least claims 5 and 6, note the offset portion formed in the center of the rack. Further, the offset portion of the second plurality of support members extends in a plane which is vertically below the common plane.

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In regard to at least claim 9, the rack includes first and second frontal segments arranged laterally outwardly from the vertical offset portion.

In regard to at least claim 10, the second plurality of support members in the rack of Schweller are considered to include a bend portion as recited in the same manner as that shown, for instance, in applicant's Fig. 5.

In regard to at least claim 11, the down-turned segments of the center of the rack are spaced from a respective one of the opposing side rods as recited.

In regard to at least claim 12, the vertically offset portion noted above is considered to include portions that are "in-turned" as recited.

In regard to at least claim 13, the vertically offset portion would be capable of serving as a handle as recited.

In regard to at least claim 14, the vertically offset portion is located centrally along the front rod.

In regard to at least claim 15, the front and back of the zone formed by the plurality of second support members are broadly regarded as first and second distinct food item access zones.

In regard to at least claim 17, the food item support zones includes first and second food item support zones portions (portions to left and right of the food item access zone).

In regard to claim 18, as noted above, the recited rack is present in the prior art reference to Schweller. However, Schweller shows a refrigerator, which is possibly, not regarded as a cooking appliance having an oven cavity.

Richardson is again cited to show that a person of ordinary skill in the art would reasonably understand that a rack for a refrigerator may also be incorporated into an oven having an oven cavity (such as 6 of Richardson) (see Richardson, page 1, lines 32-49).

Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the rack of Schweller in an oven with oven cavity, such as that of Richardson, as the use of a rack in either a refrigerator or oven is expressly recognized in the prior art (see Richardson, page 1, lines 32-49).

In regard to at least claim 19, note the offset portion formed in the center of the rack. Further, the offset portion of the second plurality of support members extends in a plane, which is vertically below the common plane.

In regard to at least claim 20, the rack includes first and second frontal segments arranged laterally outwardly from the vertical offset portion.

6. **Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Schweller in view of Richardson** as applied to claim 1 above, and further in view of **U.S. Patent No. 6,644,302 to Bartley** ("Bartley") (previously cited).

Schweller in view of Richardson teach all the limitations of claim 16 except possibly for at least one cross-bar spaced forward of the rear bar.

Bartley teaches an oven rack that is considered analogous to the rack of each of applicant's invention, Schweller, and Richardson. In Bartley, the rack includes a cross-bar (16) spaced from a rear bar (20) that would at least function as an additional supporting member for the rack (see Fig. 1A and col. 3, lines 5-15).

Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the rack of Schweller to incorporate a cross-bar as taught in Bartley to desirably serve as an additional supporting member for the rack (see Bartley, Fig. 1A and col. 3, lines 5-15).

Allowable Subject Matter

7. Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims (note also the claim objections above).

8. The following is a statement of reasons for the indication of allowable subject matter:

In regard to claim 7, the prior art does not disclose, teach or suggest, the oven rack having the combination of features recited in claims 1 and 5 in further combination with the recitation that the offset portions of each of the second plurality of support members extends less than one-half a depth of the support platform. The closest prior art, Schweller, appears to show that the offset portion extends the entire depth of the support platform and not the "less than one-half" depth of the support platform" as recited.

Claim 8 is allowable as being dependent upon allowable claim 7.

Response to Arguments

9. Applicant's arguments with respect to claims 1, 2, 4-6, and 9-20 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

10. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR

1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven McAllister, can be reached (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc
July 3, 2007


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749